

HOUSE BILL No. 2964

By Committee on Federal and State Affairs

2-20

9 AN ACT concerning eminent domain; amending K.S.A. 26-509 and 26-
10 513 and repealing the existing sections.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 26-509 is hereby amended to read as follows: 26-
14 509. (a) In an action on appeal the court shall assign the case for trial to
15 a jury, or to a master in accordance with K.S.A. 60-253, ~~or acts amen-~~
16 ~~datory thereof or supplemental and amendments~~ thereto.

17 (b) *Whenever the court appointed appraisers award an amount to the*
18 *defendant that is greater than the highest documented offer from the*
19 *plaintiff, the court shall order the plaintiff to pay to the property owner's*
20 *attorney all reasonable attorney fees.*

21 (c) Whenever the plaintiff condemner *or defendant property owner*
22 shall appeal the award of court appointed appraisers, and the jury renders
23 a verdict for the landowners in an amount greater than ~~said such~~ apprais-
24 ers' award, the court ~~may allow as court costs an amount to be paid to~~
25 ~~the landowner's attorney as shall order the plaintiff to pay to the property~~
26 *owner's attorney all reasonable attorney fees.*

27 Sec. 2. K.S.A. 26-513 is hereby amended to read as follows: 26-513.

28 (a) *Necessity.* Private property shall not be taken or damaged for public
29 use without just compensation.

30 (b) *Taking entire tract.* If the entire tract of land or interest in such
31 land is taken, the measure of compensation is the fair market value of the
32 property or interest at the time of the taking.

33 (c) *Partial taking.* If only a part of a tract of land or interest is taken,
34 the compensation and measure of damages is the difference between the
35 fair market value of the entire property or interest immediately before
36 the taking, and the value of that portion of the tract or interest remaining
37 immediately after the taking.

38 (d) *Factors to be considered.* In ascertaining the amount of compen-
39 sation and damages, the following nonexclusive list of factors shall be
40 considered if such factors are shown to exist. Such factors are not to be
41 considered as separate items of damages, but are to be considered only
42 as they affect the total compensation and damage under the provisions
43 of subsections (b) and (c) of this section. Such factors are:

- 1 (1) The most advantageous use to which the property is reasonably
2 adaptable.
- 3 (2) Access to the property remaining.
- 4 (3) Appearance of the property remaining, if appearance is an ele-
5 ment of value in connection with any use for which the property is rea-
6 sonably adaptable.
- 7 (4) Productivity, convenience, use to be made of the property taken,
8 or use of the property remaining.
- 9 (5) View, ventilation and light, to the extent that they are beneficial
10 attributes to the use of which the remaining property is devoted or to
11 which it is reasonably adaptable.
- 12 (6) Severance or division of a tract, whether the severance is initial
13 or is in aggravation of a previous severance; changes of grade and loss or
14 impairment of access by means of underpass or overpass incidental to
15 changing the character or design of an existing improvement being con-
16 sidered as in aggravation of a previous severance, if in connection with
17 the taking of additional land and needed to make the change in the
18 improvement.
- 19 (7) Loss of trees and shrubbery to the extent that they affect the value
20 of the land taken, and to the extent that their loss impairs the value of
21 the land remaining.
- 22 (8) Cost of new fences or loss of fences and the cost of replacing
23 them with fences of like quality, to the extent that such loss affects the
24 value of the property remaining.
- 25 (9) Destruction of a legal nonconforming use.
- 26 (10) Damage to property abutting on a right-of-way due to change of
27 grade where accompanied by a taking of land.
- 28 (11) Proximity of new improvement to improvements remaining on
29 condemnee's land.
- 30 (12) Loss of or damage to growing crops.
- 31 (13) That the property could be or had been adapted to a use which
32 was profitably carried on.
- 33 (14) Cost of new drains or loss of drains and the cost of replacing
34 them with drains of like quality, to the extent that such loss affects the
35 value of the property remaining.
- 36 (15) Cost of new private roads or passageways or loss of private roads
37 or passageways and the cost of replacing them with private roads or pas-
38 sageways of like quality, to the extent that such loss affects the value of
39 the property remaining.
- 40 (16) *Loss of or damage to value of any livestock due to relocation or*
41 *early sale.*
- 42 (17) *Costs of relocating any moveable property to new location.*
- 43 (18) *Extra costs of replacing any buildings with buildings of like size*

1 *and quality.*

2 (19) *Costs of real estate fees in purchasing replacement property.*

3 (20) *Costs of buying new property caused by any difference between*
4 *the mortgage rate on the condemned property and prevailing mortgage*
5 *rates available to buy new property.*

6 (21) *Loss of future profits from appreciation of the condemned prop-*
7 *erty compared to lower future appreciation of other available properties*
8 *that can be put to a similar use.*

9 (e) *Fair market value. For the purposes of this act, “fair market value”*
10 *means ~~the~~ 125% of the largest amount in terms of money that a well*
11 *informed buyer is justified in paying and a well informed seller is justified*
12 *in accepting for property in an open and competitive market, assuming*
13 *that the parties are acting without undue compulsion. The fair market*
14 *value shall be determined by use of the comparable sales, ~~cost or capi-~~*
15 *talization of income appraisal methods or any combination of such meth-*
16 *ods appraisal method, the cost appraisal method, the capitalization of*
17 *income appraisal method, or any combination of such methods. If any of*
18 *such calculation methods results in contradictory or differing compensa-*
19 *tion amounts, the defendant shall be awarded the largest amount calcu-*
20 *lated by any of such methods.*

21 Sec. 3. K.S.A. 26-509 and 26-513 are hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its
23 publication in the statute book.